

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYNTHIA L. BAKER,

Plaintiff,

V.

CITY OF SEATAC, et al.,

Defendants.

CASE NO. C12-1985JLR

ORDER ON CITY COUNCIL DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION

Currently before the court is Defendants Barry Ladenburg, Rick Forschler, Terry Anderson, Tony Anderson, Dave Bush, Pam Fernald, and Mia Gregerson's motion to dismiss Plaintiff Cynthia L. Baker's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Mot. (Dkt. # 14).) Defendants are all city council members for the City of SeaTac, Washington. (Compl. (Dkt. # 1) ¶¶ 1.4-1.10.) Ms. Baker opposes the motion in part. (Resp. (Dkt. # 20).)

1 Having considered the submissions of the parties, the balance of the record, and
 2 the relevant law, and no party having requested oral argument, the court GRANTS
 3 Defendants' motion to dismiss (Dkt. # 14).

4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 This case is a dispute over the city's termination of Ms. Baker's employment. The
 6 City of SeaTac employed Ms. Baker from February 2011 to August 2012 as its Director
 7 of the Department of Community and Economic Development. (Compl. ¶¶ 3.1-3.2.) On
 8 March 20, 2012, Defendant Todd Cutts,¹ the city manager, and the city's human
 9 resources director, Anh Hoang,² commenced a series of meetings with Ms. Baker. (*Id.* at
 10 ¶ 3.7.) Ms. Baker states that Mr. Cutts and Ms. Hoang did not inform her that there were
 11 any specific issues with her performance during these meetings. (*Id.*)

12 On April 12, 2012, Mr. Cutts placed Ms. Baker on administrative leave. (*Id.* at
 13 ¶ 3.10.) After conducting an investigation, Mr. Cutts sent Ms. Baker a notice of
 14 misconduct on July 17, 2012. (*Id.* at ¶ 3.11.) The notice afforded Ms. Baker an
 15 opportunity to rebut the charges against her. (*Id.*) Ms. Baker states that she provided the
 16 city with a "point-by-point rebuttal" of the charges. (*Id.* at ¶ 3.12.) On August 8, 2012,
 17 Mr. Cutts notified Ms. Baker that the city was terminating her employment, effective
 18 immediately. (*Id.*) On August 15, 2012, Ms. Baker, through her attorney, appealed her
 19 termination to the city council and requested a post-termination review. (*Id.* at ¶ 3.13.)

20
 21 ¹ Mr. Cutts did not join the instant motion to dismiss.
 22 ² Ms. Hoang is not a defendant in this case.

1 The city attorney rejected Ms. Baker's requests, allegedly informing Ms. Baker that the
2 city's "post-termination process is the judicial process." (*Id.* at ¶ 3.14.)

3 Ms. Baker's complaint alleged (1) a 42 U.S.C. § 1983 claim for violation of her
4 procedural due process rights under the 14th Amendment of the United States
5 Constitution; (2) violation of Article 1, Section 3 of the Washington Constitution; and (3)
6 wrongful discharge under Washington law. (*See generally id.*) Ms. Baker named the
7 City of SeaTac and Mr. Cutts, in his official and individual capacity, as defendants. (*See*
8 *id.* at 1.) Neither Defendant is a party to the instant motion. (Mot. at 1.) Ms. Baker also
9 named city council members Barry Ladenburg, Tony Anderson, Dave Bush, and Mia
10 Gregerson as defendants in their official and individual capacity. (*See* Compl. at 1.) Ms.
11 Baker named city council members Rick Forschler, Terry Anderson, and Pam Fernald as
12 defendants solely in their official capacities. (*Id.*) Subsequent to Defendants' filing of
13 the instant motion, Ms. Baker voluntarily dismissed her claim under the Washington
14 State Constitution. (*See* 2/11/13 Notice (Dkt. # 24) at 1.) Ms. Baker also voluntarily
15 dismissed her claims against all Defendant city council members in their official
16 capacities, thereby removing Rick Forschler, Terry Anderson, and Pam Fernald from this
17 action. (*See id.*) Thus, the question raised by the instant motion is whether to dismiss
18 Ms. Baker's remaining 42. U.S.C. § 1983 and wrongful discharge claims against Mr.
19 Ladenburg, Mr. Anderson, Mr. Bush, and Ms. Gregerson in their individual capacities.

20 **III. DISCUSSION**

21 Defendants contend that Ms. Baker has not alleged any causal connection between
22 Defendants' actions and the alleged constitutional violation. (Reply (Dkt. # 25) at 3.)

1 Ms. Baker cannot, as a matter of law, establish that Defendants caused the alleged
2 depravation of her constitutional rights because the individual city council members
3 lacked authority under state law to grant Ms. Baker post-termination due process.³

4 Section 1983 of Title 42 states that: “Every person who, under color of any
5 statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of
6 Columbia, subjects, or causes to be subjected, any citizen of the United States . . .
7 deprivation of any rights, privileges, or immunities secured by the Constitution and laws,
8 shall be liable to the party injured.” 42 U.S.C. § 1983. To state a valid claim under
9 Section 1983, the plaintiff must establish that the defendant was the proximate cause of
10 the alleged constitutional violation. *See Martinez v. State of Cal.*, 444 U.S. 277, 285
11 (1980) (holding that there is no § 1983 liability where the alleged violation is “too
12 remote” from the defendants’ alleged conduct).

13 Here, Defendants could not have proximately caused the alleged deprivation of
14 Ms. Baker’s procedural due process rights. Neither the city council as a whole, nor its
15 individual members, could have granted Ms. Baker’s request. The City of SeaTac is a
16 non-charter code city, with a council-manager form of government. (Mot. at 2.) Under
17 this form of municipal government, a city council has legislative authority over city
18 affairs, “except insofar as such power and authority is vested in the city manager.” RCW
19 35A.13.230. The City of SeaTac has vested authority over employment-related decisions

1 to its city manager. *See* SeaTac Municipal Code 2.65.010 (granting the city manager
2 “authority to administer personnel matters of the city”); RCW 35A.13.080 (specifying
3 that the city manager has authority over employment related decisions in non-charter
4 code cities). If Defendants had granted Ms. Baker’s request, they would have violated
5 state law: “Neither the council, nor any of its committees or members shall direct or
6 request the appointment of any person to, or his or her removal from, office by the city
7 manager.” RCW 35.18.110; *see also Citizens for Des Moines, Inc. v. Peterson*, 106 P.3d
8 290, 294 (Wash Ct. App. 2005) (holding that an individual city council member could not
9 award a contract because, by doing so, he would violate RCW 35.18.110 by directing the
10 administrative decisions of the city’s employees).

11 Defendants are legislators, not administrators; they had no power to grant or deny
12 Ms. Baker due process. Accepting Mr. Baker’s allegations as true, *see Ashcroft v. Iqbal*,
13 556 U.S. 662, 679 (2009), and assuming she has properly stated a due process violation,
14 the individual city council members nevertheless did not proximately cause the violation.

15 **IV. CONCLUSION**

16 For the foregoing reasons, the court GRANTS Defendants’ motion to dismiss (Dkt. # 14).

17 Dated this 5th day of March, 2013.

20 
21 JAMES L. ROBART
22 United States District Judge